IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1398 OF 2004

Smt.Padma Nirmal Agarwal,)
an Indian Inhabitant, residing at)
Flat No.16, 471/C, Manu Mahal,)
King's Circle, Matunga,)
Mumbai - 400 019.)..Petitioner

Vs.

1. Union of India,)
Ministry of Law and Justice,)
Aayakar Bhavan, Annexe Building,)
Marine Lines,)
Mumbai - 400 020.)

2. The Competent Authority,)
SAFEMA & NDPS Acts,)
Mittal Court, "C" Wing,)
3rd Floor, Nariman Point,)
New Delhi.)

3. The Appellate Tribunal for)
Forfeited Property, New Delhi.)

4. The State of Maharashtra.)..Respondents

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Shri Maqsood Khan for the Petitioner.

Shri R.F.Lambay for respondent Nos.1, 2 and 3.

Ms P.H.Kantharia, APP for respondent No.4-State.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 11th March, 2005.

JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard. Perused the records. The petitioner challenges the orders passed by the Respondent Nos.2 and 3 in relation to the forfeiture of the property in exercise of the powers under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, hereinafter called as "SAFEMA", and further for direction to unseal the property which was sought to be forfeited by those orders of forfeiture.

2. One Nirmal Motilal Agarwal, husband of the Petitioner herein, was detained under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, hereinafter called as "COFEPOSA", and under the order dated 23rd March, 1987, pursuant to the report of the Advisory Board under Section 8 dated 17th July, 2003, he was released on 4th August, 2003. Meanwhile, by an order dated 28th June, 2001, in exercise of the powers under Sections 7 and 19(1) of SAFEMA, the property of the detenu comprised of Flat No.16, 417/C, Manu Mahal, King’s Circle, Mumbai - 400 019, was ordered to be forfeited to the Central Government. Being aggrieved

by the said order, the same was challenged by the detenu in Appeal being Appeal No.35/BOM of 2001 which came to be dismissed by the order dated 3rd December, 2002. The order of detention was revoked on 17th July, 2003 on receipt of the report from the Advisory Board. The detenu, who was released on 4th August, 2003, expired on 6th August, 2003. Writ Petition No.141 of 2003 came to be filed by the Petitioner herein in her capacity as legal heir of the deceased detenu praying for quashing of the orders dated 28th June, 2001 and 3rd December, 2002 passed by the Respondent Nos.2 and 3, respectively, and further for removal of the seal to the said Flat No.16 and to hand over the possession thereof to the Petitioner. The said Petition came to be disposed of by the order dated 29th April, 2004 while recording the statement of the learned Advocate for the Respondents that the Petitioner has already filed an application for release of the property consequent to the revocation of the detention order and the competent authority to dispose of the said application within a period of two weeks. Consequently, the Petitioner did not press for the relief in the Petition and it was withdrawn under the said order dated 29th April, 2004. The Respondent No.2 thereupon disposed of the said application under

the order dated 9th June, 2004 and did not grant any relief to the Petitioner. Hence the present Petition.

3. The impugned order is sought to be challenged on the ground that the detention order which was the basis for passing the order by the competent authority under SAFEMA having been revoked, for all purposes it is non-est, and therefore, the entire proceedings under SAFEMA also became void ab initio, and therefore, the orders passed by the Respondents are liable to be quashed and the petitioner, therefore, is entitled to get the property released in her favour. Drawing attention to the provisions of law comprised under Section 2(2)(b) of SAFEMA, the learned Advocate for the Petitioner has submitted that the Authority looses its jurisdiction to deal with the property consequent to the revocation of the detention order, pursuant to the report of the Advisory Board under Section 8 of COFEPOSA dated 17th July, 2003. He has further submitted that the question of applicability of Section 20 of SAFEMA does not arise as the entire proceedings under SAFEMA become void ab initio in view of the revocation of the order of the detention on the advise of the Advisory Board. Reliance is sought to be placed in the decisions in the matter of **Arvind**

Ganeshmal Jain v. The Union of India & Ors., reported in 1998 ALL MR (Cri) 1376, of **Smt.Gangadevi v. Union of India & Anr.,** reported in 1997 Cri.L.J. 228, and **Union of India & Ors. v. Mohanlal Likumal Punjabi & Ors.,** reported in 2004 AIR SCW 1153.

4. The learned APP, on the other hand, referring to the fact that the proceedings under SAFEMA were concluded in all respects and the properties had already been vested in the Government much prior to the revocation of the order of the detention, the proceedings under SAFEMA are not affected and it had attained finality for all purposes, and therefore, it cannot be held to be void ab initio or otherwise bad in law and therefore, the Petitioner cannot seek the relief asked for. Reliance is placed in that regard in the decision of the Apex Court in the matter of **Karimaben K. Bagad v. State of Gujarat & Ors.,** reported in 1998 ALL MR (Cri) 1444.

5. The point which arises for consideration is whether the proceedings for forfeiture of the property under SAFEMA which had attained finality prior to revocation of detention order, would be affected in any manner by such revocation of order of detention

pursuant to the report of the Advisory Board under Section 8 of COFEPOSA ?

6. The scheme of SAFEMA reveals that the enactment has been brought into force basically to provide for forfeiture of illegally acquired property of a person to whom SAFEMA applies, and for matters connected therewith or incidental thereto. It is essentially for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy and to deprive persons engaged in such illegal activities and manipulation of their ill-gotten gains. It applies to two types of persons, one to those who are convicted either under the Sea Customs Act, 1878 and Customs Act, 1962 or Foreign Exchange Regulations Act, 1947 and Foreign Exchange Regulations Act, 1973, and secondly to those persons against whom the order of detention is made under COFEPOSA.

7. Section 2(2)(b) of SAFEMA provides that every person in respect of whom an order of detention has been made under COFEPOSA, the provisions of SAFEMA would apply. However, the proviso to the said sub-section provides for cessation of applicability of

SAFEMA as well as for exemption from the applicability of SAFEMA. Clauses (i) to (iii) of the proviso relate to the first category and clause (iv) speaks of exemption. Accordingly, the clause (i) of the said proviso relates to an order of detention to which the provisions of Section 9 or 12A of COFEPOSA do not apply, in which case, SAFEMA would cease to apply on revocation of such order either on report of Advisory Board, or before the receipt of such report or before making such reference to the Advisory Board. The clause (ii) thereof relates to an order to which the provisions of Section 9 apply, in which case SAFEMA would cease to apply if such order is revoked before expiry of the time for or on the basis of the review under sub-section (3) of Section 9 or on report of the Advisory Board under Section 8 read with sub-section (2) of Section 9. The clause (iii) thereof relates to an order to which the provisions of Section 12A apply, in which case SAFEMA would cease to apply if such order is revoked before the expiry of the time for or on the basis of the first review under sub-section (3) of Section 12A or on the basis of the report of the Advisory Board under Section 8 read with sub-section (6) of Section 12A of COFEPOSA. In terms of the clause (iv) of the proviso, the provisions of SAFEMA

would not apply to an order which is set aside by the Court. The explanation 4 to the said provision of law, for the avoidance of doubt, provides that the question whether any person is a person to whom the provisions of SAFEMA apply may be determined with reference to any facts, circumstances or events including any conviction or detention which had occurred or taken place before the commencement of SAFEMA. It is to be noted that in the case in hand, we are not concerned about the provisions of law comprised under clause (ii) to (iv) but the point relates to the consequences which would follow under clause (i) on revocation of the order of detention pursuant to the report of the Advisory Board.

8. The provision relating to the power of revocation of detention order is to be found under Section 11 of COFEPOSA. It deals with the power of revocation of detention orders without prejudice to provisions of section 21 of the General Clauses Act, 1897. Accordingly, any such detention order passed under COFEPOSA by an officer of State Government can be revoked or modified either by the State Government or the Central Government and in case of order of detention being made by an officer of the Central

Government, it can be revoked or modified by the Central Government. Sub-section (2) thereof provides that the revocation of a detention order shall not bar the making of another detention order under section 3 against the same person. While Section 11 speaks of power of the Government to revoke detention order, Section 8(f) thereof speaks of obligation of the Government to revoke such order under the circumstances described thereunder.

9. Section 8 which deals with the subject of Advisory Board and its functions and powers under the COFEPOSA. Clause (a) of Section 8 deals with the powers of the Government to constitute the Advisory Board. Clause (b) thereof requires the Government to refer the order of detention of the Advisory Board within five weeks from the date of detention of a person. Clause (c) provides that the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government, or from the person concerned, and if, in any particular

case, it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned. Clause (d) deals with the situation in case of difference of opinion amongst the members of the Board. Clause (e) bars appearance of legal practitioner on behalf of the detenu before the Board. The clause (f), which is also relevant, provides that in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

10. It is, therefore, clear that SAFEMA would apply to every person in respect of whom an order of

detention under COFEPOSA has been made. It does not require to have an order being actually implemented or executed. It does not require that the person should be actually detained pursuant to such order. The applicability of SAFEMA is not postponed till the actual enforcement of such order. It merely speaks of issuance of such order irrespective of the fact whether effect has been given to such order or not. This is apparent from the expression "has been made" used in Section 2(2)(b) of SAFEMA. It nowhere speaks of actual detention of such person pursuant to issuance of such order. Likewise, it is immaterial whether such order of detention was made prior to or after enforcement of SAFEMA. Even in cases where such orders were passed prior to enforcement of SAFEMA, the provisions of SAFEMA would be attracted. The explanation 4 to the said Section 2(2) is very clear in that regard.

11. The persons, however, would stand excluded from the net of SAFEMA on happening of certain events after issuance of the order of detention. Such persons are those in respect of whom the orders of detention undergo the changes specified under the proviso to Section 2(2)(b) of SAFEMA. Those are the

orders which are either revoked in the circumstances described under clauses (i) to (iii) thereof or set aside by the Court as stated in the clause (iv) thereof. Undoubtedly, therefore, in terms of clause (i) of the said proviso, on revocation of the order of detention either under Section 11 or 8(f) of COFEPOSA, the provisions of SAFEMA would cease to apply to those persons to whom the same were applicable consequent to the issuance of the order of detention. In other words, from the day the order is revoked, no action would lie against such persons or their properties under SAFEMA. Does it mean that it would render the action initiated and completed under SAFEMA prior to such revocation of detention order to be bad in law ? Whether the situation ante the order of detention which would result in case of declaration of detention order being void by the Court in terms of clause (iv) of the said proviso, would also result in cases of revocation of detention order under Section 11 and/or Section 8(f) of COFEPOSA ?

12. As already observed above, the revocation of a detention order is under Section 11 or Section 8(f) of COFEPOSA, whereas quashing of the order by the Court is under Article 226 of the Constitution of India.

Though the ultimate effect of the proceedings under both the sections as far as the detention is concerned may be the same, since either on revocation or quashing of detention order, there could be no further detention of the detenu based on the order which is revoked or quashed, yet quashing of the detention order by the Court would result in declaring the detention order to be void ab initio whereas the revocation of detention order would result in recalling the detention order from the day of such revocation. In case of order being declared void by the Court, all the acts done in pursuance of the order during the period from the date of passing of detention order till it is quashed by the Court, would automatically be rendered bad as the order of detention itself is declared void ab initio, and therefore, anything done on the basis of such void order would also automatically become void. Since the original order of detention itself is rendered non-est, no act done on the basis of such an order, which has no legal sanctity at any point of time right from its inception, can survive or get legal sanction. It is to be noted that Section 2(2)(iv) of SAFEMA speaks of setting aside of "order of detention" by the Court and not an order of the Court merely declaring

"continued detention" to be bad for procedural irregularity resulting in violation of right accrued under Article 22(5) of the Constitution of India, or for some other reason.

13. Once the detention order is declared as void, obviously, it will render all the consequential acts and action taken on the basis of such void order to be bad in law ab initio. However, revocation of order would stand in different footing. Ipso facto, it would not affect the acts done pursuant to or after passing of the order of detention but before its revocation, unless there are statutory provisions to the contrary. In case of revocation, it implies cancellation of the order. Question of cancellation of an order can arise only when there exists an order. Cancellation implies termination. Termination is to put an end to something. It presupposes existence of the thing or contract or liability or the right which existed and which is being put to an end. Besides, the revocation of the order of detention under Section 11 and/or Section 8(f) itself would not affect the proceedings under SAFEMA which had commenced. It is to be noted that the proceedings are initiated under Section 6 of SAFEMA in relation to illegally acquired

properties by the persons, who is either convicted under the Customs Act or Foreign Exchange Regulations Act or the person in respect of whom an order of detention is made under COFEPOSA or the relations of such persons who are benefited by the unlawful activities of the detenu. It is the making of the order of detention itself would entitle the Competent Authority to issue notice under Section 6 of SAFEMA to such person or persons, and the revocation of such order under Section 11 and/or Section 8(f) of COFEPOSA would not affect the proceedings once initiated under SAFEMA. The applicability of SAFEMA is terminated only on happening of the circumstances enumerated and the conditions to the extent provided under the proviso to sub-section 2(2)(b) of SAFEMA are satisfied and not otherwise.

14. In order to understand the difference between the effect of quashing of the order by the Court and revocation by the order of the authorities under Section 11 and/or 8(f) of COFEPOSA, it would be appropriate to lay our hands on the decision of the Apex Court in the matter of **Union of India & Ors. v. Haji Mastan Mirza,** reported in AIR 1984 SC 681 and **Ibrahim Bachu Bafan v. State of Gujarat & Ors.,**

reported in (1985) 2 SCC 24.

15. In **Haji Mastan Mirza's case (supra)**, the detention order was set aside and the detention itself was held as bad in law. Consequently, the proceedings under Section 6(1) read with Section 7 of SAFEMA could not stand. It was specifically held that "a valid order of detention under COFEPOSA is a condition precedent for the proceedings being taken under Ss.6 and 7 of SAFEMA". Obviously, if the order of detention passed under COFEPOSA is itself set aside, it will result in rendering such order "non est" and therefore, in the absence of any valid order of detention having not come in existence, question of action being taken in exercise of powers under the provisions of SAFEMA cannot arise. Albeit, the setting aside or quashing of detention order is by way of judicial pronouncement in that regard. It does not include revocation of order by the Government in exercise of its powers under Section 11 and/or 8(f) of COFEPOSA.

16. In **Ibrahim Bachu Bafan's case (supra)**, while dealing with the connotation of the word "revocation", it was held that when the High Court exercises its

jurisdiction under Article 226 of the Constitution, it does not make an order of revocation by issuing a high prerogative writ like habeas corpus or certiorari. By declaring the order to be void and striking down the same, it nullifies the order. As far as revocation is concerned, it is a process of recall of what had been done. It implies an idea of cancellation of the original order, but does not mean repudiation. Though the effect of revocation of order and quashing of order may appear to be the same, the consequences thereof are different in the sense that, in case of revocation of order, the authority is not forbidden from exercising power under Section 11(2) and thereby to clamp another order of detention on the same person, whereas in case of quashing of the order of detention by the High Court, such power of issuing fresh order of detention under Section 11(2) is not available and the decision in **Ibrahim Bachu Bafan's case (supra)** is very clear in that regard.

17. Taking into consideration both the above quoted decisions of the Apex Court, declared by three Judges Bench in both the matters, it is clear that the pre-requirement, and rather only requirement, for invoking the powers under Section 6 and/or 7 of SAFEMA

is the valid order of detention issued under COFEPOSA. The validity of the order spoken of is at the stage of inception i.e. at the stage of making of or issuing the order of detention. In other words, if the order of detention remains valid, but continued detention is rendered illegal or bad, that by itself will not affect the validity of the order of detention but its implementation i.e. of detention, would not be permissible for certain supervening acts or reasons. In other words, for invoking powers under SAFEMA, valid order of detention issued is a pre-condition, in the absence whereof, question of exercising powers under Section 6 and/or 7 would not arise at all. Certainly therefore contention of the learned Advocate for the petitioner is obviously correct to the extent that the existence of valid order of detention under COFEPOSA at the time of invocation of the powers under Section 6 of SAFEMA is absolutely necessary. Therefore, for invoking powers under Section 6 and/or 7 of SAFEMA, the issuance of valid order of detention under COFEPOSA coupled with the existence of such valid order of detention at the stage of invoking powers under those provisions of SAFEMA is necessary.

18. The requirement of valid order of detention

for the purpose of invoking the provisions of SAFEMA was reiterated in **Union of India and Ors. v. Monoharlal Narang,** reported in AIR 1987 SC 1472. However, it is to be noted that an order would not be invalid merely because it is revoked. For the purpose of non-applicability of the provisions of SAFEMA, it would be necessary to have the juridical pronouncement declaring the order of detention to have been set aside or quashed or to be an invalid or illegal one. In the absence of such declaration, it would not render the order of detention to be invalid.

19. Referring to the decision of the Apex Court in **Manoharlal Narang's case (supra),** it is sought to be argued that even in case of revocation, the proceedings under SAFEMA would not survive. In **Mohanlal Likumal Punjabi's case (supra),** the High Court's order dated 13th June, 1996 in Writ Petition No.1267 and 1268 of 1995 was sought to be challenged on the ground that since the revocation of detention order was in exercise of powers under Section 11(2) of COFEPOSA, the proviso to sub-section 2 of Section 2 of SAFEMA was not at all attracted and the said challenge was upheld by the Apex Court. However, since the validity of the order of detention itself was sought

to be disputed and as the said issue was not dealt with by the High Court, the matter was remanded. This decision is of no help to the petitioner to buttress his argument.

20. As already stated above, for invoking the jurisdiction in relation to the forfeiture of the property, the order of detention must be a valid order, and therefore, if the Court declares the order to be void ab initio, obviously, cause for taking action under Section 6 itself also would stand extinguished from its inception. Extinguishment of the cause from its inception is different from the cessation of the cause on happening of an event which leads to discontinuation of the cause, and such cessation will occur on revocation of the order of detention. In other words in case of order being declared to be void by the Court, it will cease to be in operation right from the very day it was issued or made. While the cessation will take effect from the date of revocation whereas the declaration of order being void will take effect from the date of issuance or making of the initial order of detention itself. However, as far as the powers of the competent authority to issue notice under Section 6 and/or

forfeit the property under Section 7 of SAFEMA are concerned, the applicability of the said provisions is not postponed till the decision on the point of revocation of the order of detention or declaration of the order to be void. The provisions of Sections 6 and 7 of SAFEMA are attracted at once, on making or on issuance of the order of detention under COFEPOSA. The applicability of these provisions is not postponed till the State decides about the revocation or the Court decides the issue of legality or illegality of the order of detention. The competent authority is not required to wait for issuing the notice under Section 6 or declaration under Section 7 till the Government decides about the revocation or the Court declares the order being void.

21. The effect or the consequences which the revocation of order of detention will have on the forfeiture proceedings under SAFEMA are those which are specified under the proviso to Section 2(2)(b) of SAFEMA. It is pertinent to note that the proceedings for forfeiture are undoubtedly to be held before the competent authority constituted under SAFEMA, but under Section 15 of SAFEMA, such authority enjoys the powers akin to that of the civil Court available under

the Code of Civil Procedure, for the purpose of adjudication of the matter. Obviously, the aggrieved party gets an ample opportunity to establish his case including the right to lead evidence. Undoubtedly, the burden of proof regarding the property being legally acquired lies upon such person in terms of Section 8 of SAFEMA. There is also an appellate remedy under Section 12 of SAFEMA available against the order of the competent authority. The decision by the competent authority is subject to the appeal remedy and cannot be assailed in any civil Court in view of specific bar provided in that regard under Section 14 of SAFEMA. Besides, the provisions of SAFEMA have overriding effect as provided under Section 24 of SAFEMA. At the same time, Section 7(3) and (4) of SAFEMA provides for vesting of the forfeited property in the Government free from all encumbrances and further Section 19 empowers taking possession of such property by the competent authority. These provisions clearly disclose finality to the proceedings under Sections 6 and 7 of SAFEMA in relation to the forfeiture of the property. Being so, once the forfeiture proceedings attain finality, can it be said that any subsequent act, including the revocation, in relation to the detention order which

was valid on the day when it was issued, and consequent to which the proceedings for forfeiture were initiated, would affect such forfeiture proceedings ? The provisions of law comprised under SAFEMA nowhere even remotely suggest that in any such circumstances, those proceedings would be affected in any manner. The judicial pronouncement only speaks of the pending proceedings being rendered invalid provided the order of detention is declared to be void by the Court and not otherwise. Albeit, the question of initiating the proceedings under Section 6 of SAFEMA could not arise after revocation of the order as in that case 'the cause' for invoking such powers would not be "in existence", in view of clauses (i) to (iii) of the proviso to Section 2(2)(b) of SAFEMA.

22. The object behind SAFEMA is to provide for forfeiture of illegally acquired properties. Section 4 provides for prohibition of holding illegally acquired property. Sub-section (1) thereof provides that as from the commencement of SAFEMA, it shall not be lawful for any person to whom SAFEMA applies to hold any illegally acquired property either by himself or through any other person on his behalf. Sub-section (2) provides that where any person holds

any illegally acquired property in contravention of the provision of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of SAFEMA. Section 3(1)(c) defines what is the illegally acquired property. It primararily classifies a property to be illegally acquired when the same is acquired by any income or earnings or assets related to the activity prohibited under any law. In other words, a property acquired through illegal means or with illegally acquired wealth would be illegally acquired property for the purpose of SAFEMA. Any such property either belonging to the person against whom the order of detention under COFEPOSA is issued or his relative as defined under the Explanation 2 of Section 2 could be subjected to the proceedings under Sections 6 and 7 of SAFEMA for the purpose of forfeiture of the property, unless the person served with such notice proves that the property was not illegally acquired property. Apparently, therefore, it shows that the proceedings for forfeiture of the property essentially relates to the property which is acquired by illegal means and illegal wealth, undoubtedly, the cause or occasion to go after such property would arise pursuant to the issuance of the detention order and not prior to that,

however at the same time, once the cause accrues for issuance of such notice under Section 6, it is not postponed any further, though, however, it could cease to exist on revocation of such order or completely wipe out the same pursuant to the declaration of the order of detention to be void.

23. It is also to be noted that in the proceedings instituted under SAFEMA, the burden of proof lies upon the holder of the property to prove that the property is not illegally acquired. Section 8 clearly states that in any proceedings under SAFEMA, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected. Any transaction in relation to such property subsequent to the issuance of the notice under section 6 would be null and void and the provision in that regard is to be found in Section 11 of SAFEMA, which provides that whereafter the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purpose of the proceedings under SAFEMA, be ignored and if such property is subsequently forfeited to the Central Government under

section 7, then, the transfer of such property shall be deemed to be null and void.

24. The decision in **Karimaben K.Bagad's case (supra),** is clearly distinguishable. In that case, the notice under Section 6 of SAFEMA was issued after revocation of the detention order. Apparently, therefore, when the provisions of Section 6 of SAFEMA were sought to be invoked, there was no order of detention in existence and therefore, the provisions of clause (i) of Section 2(2)(b) of SAFEMA were clearly attracted. That is not the case in the matter in hand. Similarly, the decision in **Gangadevi v. Union of India's case (supra)** is also of no help. In the said case, the order of detention was issued on 25th September, 1975 and was served upon the detenu on 11th March, 1976. On 1st May 1976, the detenu expired while in detention. The notice under Section 6 of SAFEMA was sought to be issued on 19th October, 1976. Obviously, pursuant to the death of the detenu, the order of detention had lapsed with effect from 1st May, 1976 and therefore on 19th October, 1976 the said order of detention was not in existence and therefore, competent authority could not have invoked the provisions of Section 6 of SAFEMA after 1st May, 1976.

Both the decisions having been delivered in totally different set of facts are of no help to the petitioner to canvass her case in the matter in hand.

25. Reverting to the facts of the case, undisputedly, the detention order was issued on 23rd March, 1987, and it was revoked only 17th July, 2003. Meanwhile, pursuant to issuance of notice under Section 6 of SAFEMA, the declaration in terms of Section 7 of SAFEMA was issued on 28th June, 2001 and the said declaration was confirmed by the appellate Tribunal on 3rd December, 2002 i.e. much prior to revocation of the order of detention. In other words, the proceedings regarding the illegally acquired property was initiated and also attained finality during the existence of valid order of detention under COFEPOSA and before the decision of the Government to revoke the said order of detention. Being so, the provisions of clause (i) of the proviso to Section 2(2)(b) of SAFEMA are not at all attracted in the case in hand.

26. As regards Section 20 of SAFEMA is concerned, it merely speaks of rectification of mistake apparent from record, and that too which comes to the notice of

the competent authority or Appellate Tribunal within a period of one year from the date of the order of the competent authority. This provision does not empower such authority to pass any order contrary to the statutory provisions, nor to recall the order which has attained finality. Besides, the order of forfeiture was passed by the competent authority on 28th June, 2001 and the application for releasing the property was filed on 4th August, 2003, beyond the period of one year. Besides, the application was not on account of any mistake in the order dated 28th June, 2001. In any case, the provisions of Section 20 of SAFEMA are not at all attracted in the matter in hand.

27. For the reasons stated above, there is no case for interference in the impugned order dated 28th June, 2001 and/or 3rd December, 2002 as also in the impugned order dated 9th June, 2004 and there is no case made out for issuance of direction to unseal the flat in question. Hence, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(P.V.KAKADE, J)